

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

**COMMENTS OF
CITY OF CHARLOTTE AND MECKLENBURG COUNTY, NORTH CAROLINA**

These Comments are filed by the Charlotte-Mecklenburg Office of Cable & Franchise Management (OCFM) on behalf of the City of Charlotte and Mecklenburg County, North Carolina ("Charlotte-Mecklenburg") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Charlotte-Mecklenburg believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our communities.

Cable Franchising in Our Community

Community Information

The Charlotte-Mecklenburg Office of Cable & Franchise Management (OCFM) represents the City of Charlotte and unincorporated areas of Mecklenburg County in administering cable franchises. The City of Charlotte has a population of more than 648,000 and Mecklenburg County has a population of 850,000. Our franchised cable provider(s) are Adelphia Prestige ("Adelphia") Cablevision in northern Mecklenburg County and Time Warner Cable ("Time Warner") – which provides cable services throughout Mecklenburg County. Our community has negotiated cable franchises since 1978. Information concerning cable franchising in the communities throughout Charlotte-Mecklenburg is divided into the following areas:

- **City of Charlotte** – representing information specific to the City of Charlotte franchises with Time Warner

- **Mecklenburg County** – representing information specific to franchises with Adelphia and Time Warner in the unincorporated areas of Mecklenburg County.
- **Charlotte-Mecklenburg** – representing information that is substantially the same for all franchises in the City of Charlotte and Mecklenburg County.

Current Franchises – Issues Specific to City of Charlotte

Time Warner Cable division of Time Warner Entertainment – Advance/Newhouse Partnership (originally American Television and Communications Corporation d/b/a Cablevision of Charlotte) Franchise – One of two (2) non-exclusive franchises that the City of Charlotte has with Time Warner, this franchise began on February 26, 1988 and – with an extension granted by the City of Charlotte – the franchise will expire on November 1, 2010. This franchise also has several amendments involving transfers, franchise fee payments, build-out requirements leading to a franchise extension, and support for community access. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, the City expects to begin negotiating a franchise renewal with the incumbent provider in 2007. This franchise also has several amendments involving transfers, franchise fee payments, build-out requirements leading to a franchise extension, and support for community access.

Time Warner Cable division of Time Warner Entertainment – Advance/Newhouse Partnership (originally Vision Cable of North Carolina) Franchise – The second of two (2) non-exclusive franchises that the City of Charlotte has with Time Warner, this franchise began on June 28, 1991 and expires on June 27, 2006. This franchise also has several amendments involving transfers, franchise fee payments, and support for community access. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently negotiating a franchise renewal with the incumbent provider.

Cable Communications Regulations – In addition to the two franchises that have, over the years, transferred to Time Warner, the City of Charlotte has a Cable Communications Regulations Ordinance with several amendments which was approved by Charlotte's City Council. These regulations provide the basis for all current and future cable franchise agreements that include requirements to safeguard the well being of the residents and infrastructure of the City of Charlotte.

Franchise Fees – These franchises require the cable operator – Time Warner – to pay a franchise fee to the City of Charlotte in the amount of 5% of the cable

operator's gross revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act and other clarifications specific to each franchise.

PEG – In the original franchise the City of Charlotte required one (1) access channel for each area in the community: educational, government, and public usage. The original franchise also required cable operator support in the form of training, technical and other production assistance for community and educational access. Additionally, the cable operator was required to provide a staff of five (5), at least \$20,000 in equipment, a van, and other studio facilities to handle operations and training for the Public Access Channel. The City later negotiated with the cable operator to add channel capacity for access and we currently require the cable operator to provide capacity and support for six (6) public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one (1) channel devoted to public access; three (3) channels devoted to educational access; one (1) channel devoted to government access – and one (1) channel which is being held in reserve for future use. These channels are being operated and maintained as follows:

1. Government Access – City of Charlotte & Mecklenburg County – shared channel
2. Educational Access – Charlotte-Mecklenburg Schools
3. Educational Access – Central Piedmont Community College
4. Educational Access – University of North Carolina at Charlotte
5. Public Access - Charlotte-Mecklenburg Public Access Corporation

All PEG channels are required to be cablecast on the lowest tier of service offered to subscribers.

The franchises require that our PEG channels be supported in the following ways by the cable operator: In 2000, the City of Charlotte and Time Warner modified their franchises and deleted the requirement for the operator to provide Public Access studio facilities. Currently Time Warner subscribers contribute instead to the Charlotte Mecklenburg Public Access Corporation (CMPAC) – in the equivalent of \$0.22 per subscriber per month minus 2% documented bad debt. This access support was broken out from the basic cable rate and appears itemized on the monthly billing statements of all City of Charlotte subscribers. The access support fee is impacted by increases in the Consumer Price Index for the South Region, which is reviewed annually.

INET – Time Warner has met institutional network ("INET") requirements pursuant to the 1988 ATC-Cablevision franchise by providing \$80,000 in equipment and building an “uptown loop” of telecommunications infrastructure of at least five (5) major governmental facilities along with their initial obligation for funds and equipment for the City of Charlotte to manage the network. Currently, the INet

facilities are used to conduct daily business operations, including data transmission, video education and training, public safety, sports and other events. Facilities connected to the uptown INet include: the Charlotte Mecklenburg Government Center, police and fire headquarters and stations, sheriff and jail central facilities, courthouses, the Charlotte-Mecklenburg Schools headquarters, the public library, Medic, the Convention Center and Central Piedmont Community College in addition to other uptown area sites.

However, Time Warner has not complied with the requirement under its 1982 County or 1991 City Vision Cable franchises for five (5) downstream channels and four (4) upstream channels to be used by Charlotte-Mecklenburg. Interconnectivity of the INet among other cable operators in Charlotte-Mecklenburg is required. Additionally, INet facilities must be designed for dedicated institutional access channels to serve City, County, State or Federal governmental agencies, educational institutions, health care institutions or other nonprofit and profit-making organizations that may be qualified to serve the community.

Current Franchises – Issues Specific to Mecklenburg County

Adelphia-Prestige Cablevision L.L.C. – Adelphia has a franchise to provide cable services to the unincorporated portions of Mecklenburg County. This renewed franchise began on April 4, 2000 and expires on April 3, 2010. This franchise evolved over time from an original franchise issued in 1982 to Lakeside Cable TV and amendments involving transfers to Prestige Cablevision and then Adelphia. In 2005 Adelphia requested a transfer of its cable system to Time Warner. However, the County's attempts – pursuant to federal law – were unsuccessful in securing adequate information regarding the transfer. Consequently, the County was forced to issue a "denial without prejudice" of the transfer request. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. We expect to begin negotiations in 2007 for this franchise renewal.

Time Warner Cable division of Time Warner Entertainment – Advance/Newhouse Partnership (originally Vision Cable of North Carolina, Inc.) Franchise – Time Warner has a franchise to provide cable services to the unincorporated portions of Mecklenburg County. This franchise began in May 2, 1982 and – with a five (5) year extension – expired in May 1997. From 1994 through 2004, the County and Time Warner were involved first in "informal" and then finally "formal" renewal negotiations – as per federal requirements. Pursuant to the formal process, in December 2004, Mecklenburg County issued a preliminary denial of Time Warner's franchise renewal due to numerous complex issues. Time Warner subsequently requested – as permitted federal law – an Administrative Hearing. Both parties are currently involved in discussing legal issues relating to the Hearing process.

Cable Communications Regulations – In addition to the two (2) franchises Mecklenburg County has a Cable Communications Regulations Ordinance with several amendments that was approved by the County Commissioners with input opportunities from all cable operators. These regulations provide the basis for all current and future cable franchise agreements that include requirements to safeguard the well being of the residents and infrastructure throughout Mecklenburg County.

Franchise Fee – These franchises require: (1) Adelphia to pay a franchise fee to Mecklenburg County in the amount of 5% of the cable operator's gross revenues; and (2) Time Warner to pay a franchise fee to Mecklenburg County in the amount of 3% of the cable operator's gross revenues and an additional up to 2% (per a cable operator formula specified in an amendment to the Franchise Agreement) to the local public broadcasting channel – WTVI – for support of access programming. The

revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act and local cable regulations and franchise agreement.

PEG - Both cable operators provide capacity and support for public, educational, and/or governmental ("PEG") access channels on their cable systems. Currently Time Warner – since it operates its Mecklenburg County system in conjunction with its City of Charlotte system – provides capacity and support for six (6) public, educational, and/or governmental ("PEG") access channels on the cable system. The County's Time Warner system currently has one (1) channel devoted to public access; three (3) channels devoted to educational access; one (1) channel devoted to government access – and one (1) channel which is being held in reserve for future use. Adelphia provides five (5) PEG channels – specifically Adelphia does not have the 6th channel which is reserved for future access programming. These channels are being operated and maintained as follows:

1. Government Access – City of Charlotte & Mecklenburg County – shared channel
2. Educational Access – Charlotte-Mecklenburg Schools
3. Educational Access – Central Piedmont Community College
4. Educational Access – University of North Carolina at Charlotte
5. Public Access - Charlotte-Mecklenburg Public Access Corporation

All PEG channels are required to be cablecast on the lowest tier of service offered to subscribers.

The franchises require that our PEG channels be supported in the following ways by the cable operators: Adelphia currently collects the equivalent of \$0.16 per subscriber per month for the support of access programming and pays this annually to Mecklenburg County. This access support appears as a line item on billing statements of all Adelphia subscribers. As stated previously, Time Warner pays up to 2% of gross revenues (per a cable operator formula specified in an amendment to the Franchise Agreement) to the local public broadcasting channel – WTVI – for support of access programming.

INET – Adelphia is required to provide two (2) fibers of cable at sites to be determined by Mecklenburg County to connect its INet facilities for dedicated institutional access channels to serve City, County, State or Federal governmental agencies, educational institutions, health care institutions or other nonprofit and profit-making organizations that may be qualified to serve the community. Construction of the INet is to be planned and designed in cooperation the cable operator(s) and governmental entities in the surrounding communities to ensure its usage for non-commercial educational and governmental usage only. The County and Adelphia representatives are currently engaged in meetings to activate this network at various county sites.

It is the position of Mecklenburg County that Time Warner has not complied with its 1982 requirement for five (5) downstream channels and four (4) upstream channels to be used by Charlotte-Mecklenburg. Interconnectivity of the INET

among other cable operators in Charlotte-Mecklenburg is required. The cable operator is required to maintain the INet using the highest engineering standards in the cable television industry. Mecklenburg County also maintains the right to analyze the possibility of integrating cable communications with other County, state or regional telecommunications networks. -In 2005, as a result of a series of failed negotiations regarding the INET issue, the County filed a lawsuit against Time Warner relating to contract issues, including incompleteness of this INET requirement.

Charlotte-Mecklenburg

The following franchise provisions are very similar for both the City of Charlotte and Mecklenburg County:

Emergency Alert System – Through county-wide communications regulations, cable operators in Charlotte-Mecklenburg – Adelphia and Time Warner – are required to design and build cable systems with state-of-the-art facilities that are adaptable for the development of future services and community needs, including the adherence to FCC guidelines by satisfying its Emergency Access Override Obligations throughout the County. Cable operators are also required to designate a government access channel for emergency broadcast of both audio and/or video signals.

In the original franchise for the City of Charlotte the franchise required Time Warner to make its facilities available to for the emergency use for the duration of an emergency or disaster upon the request of the City Manager or designated agent. In Mecklenburg County Adelphia is required to provide an all-channel audio-only emergency alert system for use by the County that can be accessed by touch-tone phone by a County official. This connectivity is currently allocated to the City/County Emergency Operations Center. And the operators are currently interconnected to the State of North Carolina's emergency alert network.

The cable operators are requested to periodically test the Emergency Alert System as required by Federal Law. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. Activation of this network has been utilized on several occasions including a major ice storm in early 2005 and a tornado warning later that year.

Build-out Schedule – In the original City of Charlotte Time Warner franchise included a requirement to make cable available to every dwelling unit within five (5) years from the date of the award of the franchise. This time frame was reduced to two (2) years. Currently, cable service must be extended to areas whenever there are at least thirty (30) subscribers per proposed cable plant mile for residentially

zoned areas, and at least fifty (50) subscribers per proposed cable plant mile for commercially zoned areas – except where served by another cable company. Since 2000 the density requirement has been reduced to eighteen (18) for residentially-zoned areas and fifty (50) for commercially zoned areas.

The franchises also contain provisions for cost-sharing opportunities between residents and the cable operators when there are less than the minimal requirements for subscribers per proposed cable plant mile. The cable operators are required to provide quarterly reports detailing cable plant construction designs, plans, and completion information for newly-developed areas. Our original franchise contains the following reasonable build schedule for the cable operator:

Rebuild/Upgrade – In order to ensure that our residents have access to current telecommunications technologies, franchises contains the following rebuild or upgrade requirements: The City of Charlotte signed an agreement with Time Warner in 1994 – pursuant to the terms of the original 1988 Franchise – which provided for a fifteen (15) year extension upon completion of the rebuild. This prospect of a rebuild and system upgrade was noted in the original franchise to ensure that our residents have access to current telecommunications technologies.

Customer Service Obligations – The City of Charlotte and Mecklenburg County customer service obligations – which were formalized with all cable operators in 1993 by written notices indicating the adoption of new federal regulations –help ensure that the cable operators meet or exceed federal standards. A database that documents each type of inquiry – compliment or complaint – is maintained by the OCFM in order to address specific issues, trends, and to document areas that help us to address the needs of the communities served by these cable operators. Some of these obligations include:

- **Telephone** – The telephone service of cable operators must be accessible 24-hours each day with employee availability until 11 p.m. daily. Busy signals cannot be received more than 3% of the time; answer and transfer times not to exceed 30 seconds each. Standards must be met 90% of the time.
- **Installs, Outages, Service Calls** – Installs must be completed within 7 business days. Service affected by outages must be restored within 4 hours 80% of the time. Repair response must be within 24 hours and resolved within 48 hours. Missed appointments must be made at times convenient to the customer. Complaint response must be within 7 business days and resolved within 15 business days. Standards must be met at least 95% of the time.
- **Communications, Billing, and Refunds** – Information concerning the cable system operations – including billing statements, contact information, policies, programming, rates, and refunds must be provided to customers in written form and be clear, concise, timely and understandable.

Level Playing Field – The Cable Communications Regulations Ordinances – which governs franchises in the City of Charlotte and Mecklenburg County – contains the following language which serves to establish a level playing field for all operators: “Any franchise granted hereunder shall be nonexclusive. The City/County specifically reserves the right to grant at any time such additional franchises containing substantially equivalent standards, terms and conditions to those previously granted hereunder for a cable communications system as it deem appropriate.”

Performance Bonds and Insurance – Our franchises and regulatory ordinances contain the following insurance and bonding requirements: The Mecklenburg County franchises require annual written confirmation of a letter of credit and/or performance bonds (\$15,000-\$100,000) and the City of Charlotte requires a performance bond (\$100,000.). Both require liability insurance (\$1,000,000 single/aggregate), vehicle insurance (\$1,000,000), and workers compensation (\$500,000.)

Public Rights of Way – The cable franchises and regulatory ordinances grant the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. Liquidated damages provisions are provided to ensure that public rights of way are protected from violations and damages which endanger the public safety of citizens.

Enforcement Provisions – The Cable Communications Regulatory Ordinances and franchise agreements for the City of Charlotte and Mecklenburg County provide for the following enforcement mechanisms by which we are able to ensure that the cable operators are abiding by their agreements:

- **Annual and Triennial Reviews** are conducted per the franchise agreements and ordinances by the OCFM for all City of Charlotte and Mecklenburg County franchises. Cable operators are notified of specific performance levels – including opportunities for improvement – in numerous areas, such as customer service, construction, franchise fee payments, quarterly and annual reporting, safety issues, and technical operations – via a formal Report which is issued annually.
- **Liquidated Damages** can be assessed for the willful violation of specified provisions of the agreement or communications regulations. The Liquidated Damages range from fifty dollars (\$50) per day for failure to provide required reports to four-hundred dollars (\$400) per day for failure to complete system construction. Damages are incurred only after the cable operator does not correct the violation within thirty (30) days of written notice of the violation.
- **Reports and Audits** are requirements protected under the franchises and regulatory ordinances. This allows the City and County to formally review the records of the cable operator – particularly those relating to fees due and federal/state/local construction and technical standards.

The Franchising Process

The Adelphia Cable and Time Warner Cable systems serving Mecklenburg County also serve five (5) adjoining communities: The Towns of Cornelius, Davidson, and Huntersville in Mecklenburg County and the Towns of Mooresville and Troutman in adjacent Iredell County. In 2000 all of these communities worked together and adopted identical cable franchise regulatory ordinances and issued similar franchise agreements to Adelphia. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in laws which affect the rights or responsibilities of either party under this franchise agreement will be treated as favoring the rights of the City of Charlotte and/or Mecklenburg County – the local franchising authorities – unless other emergency or statutory situations prevail.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance, each agreement allows for public readings/hearings on any issue that will materially impact the agreement as well as annual and triennial performance reviews. Changes to the franchise agreements must be adopted as amendments or ordinances through processes that require public hearings and the approval of the appropriate City Council or Board of County Commissioners and approved in two (2) separate readings.

Competitive Cable Systems

The City of Charlotte and Mecklenburg County welcomes cable television competition throughout the community. After less than a year of negotiation, in September 2000 the City of Charlotte granted a competitive franchise to Carolina Broadband, a cable over-builder that planned to operate in direct competition with Time Warner. This franchise had an aggressive build-out schedule and the management agreed to provisions that were substantially equivalent to the

franchises with Time Warner, the incumbent cable operator. Time Warner was also given the opportunity to comment on the requirements and provisions agreed to by Carolina Broadband.

Carolina Broadband actively worked with City officials and had produced significant design and engineering information for building out the cable system throughout the City of Charlotte. However, due to a downturn in the financing markets, coupled with difficulties in securing pole attachment permits, Carolina Broadband was not able to provide cable television service.

Conclusions

The local cable franchising process functions well in the City of Charlotte and Mecklenburg County. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected. Documentation of the community's needs and contractual implications for the citizens and the cable operator are readily accessible at the local level.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community – including ours – to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Therefore, the City of Charlotte and Mecklenburg County, North Carolina respectfully request that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Charlotte
Mecklenburg County

By: Doris J. Boris
Cable Communications Administrator

Charlotte Mecklenburg
Office of Cable & Franchise
Management
600 East Fourth Street – 9th Floor
Charlotte, NC 28202

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov

Andrew Long, Andrew.Long@fcc.gov

Sandra Bisanar, Deputy County Attorney, Mecklenburg County

Robert Hagemann, Senior Assistant City Attorney, City of Charlotte,